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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/701,501 | 01/08/2001 | Ole Markmann | D078 1100 | 5324 |

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James F Vaughan
Womble Carlyle Sandridge & Rice
PO Box 725388
Atlanta, GA 31139-9388

EXAMINER

AHMED, SHEEBA

ART UNIT

PAPER NUMBER

1773

DATE MAILED: 01/30/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-11

Office Action Summary

Application No.

09/701,501

Applicant(s)

MARKMANN ET AL.

Examiner

Sheeba Ahmed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 25 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response

1. Applicants response to the Office Action mailed on July 19, 2002 (Paper No. 8) is hereby acknowledged. **Claims 1-18 are pending.**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

2. Claims 1, 3-6, 8-13, and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bedford et al. (US 592,186).

Bedford et al. disclose a method of producing inlaid colored designs upon linoleum surfaces such that the pattern does not wear away with the wearing away of the surface. Coloring matter is deposited on the surface of the linoleum (***corresponding to the linoleum sheet material of the claimed invention***) and pressure is applied using rollers to cause the coloring material to penetrate the surface (***meeting the limitation that the particles embedded in the topside and are pressed into the linoleum using a pressing tool; claims 1, 411***) (Column 1, lines 14-28 and Column 2, lines 82-90). The colored material can be made to penetrate the entire thickness of the linoleum (***meeting the limitation that the particles permeate the entire layer; claims 12 and 13***) (Column 3, lines 5-15). The coloring material comprises burnt umber, flake white and ultramarine (***corresponding to the mixed mass particles of the claimed***

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invention and meeting the limitation that the particles are multicolored; claims 10 and 16) and is typically mixed with linseed oil (***thus meeting the limitation that the mixed mass particles comprise a smaller proportion of linoleum cement that the sheet)*** (Column 3, lines 40-52). The Examiner takes the position that the top layer containing the coloring material must be inherently marbled or speckled given that the coloring material comprises colorants of many different colors and thus the limitations of claims 5 and 9 are inherently met. All limitations of the claimed invention are either inherent or disclosed in the above reference.

Claim Rejections - 35 USC § 103

3. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bedford et al. (US 592,186) in view of Lusi et al. (US 5,571,588).

Bedford et al., as discussed above, do not state that the particles are applied to both sides of the linoleum or that the particles are present in an amount of 10 to 500 g/m². However, Lusi et al. disclose durable inlaid floor coverings wherein the floor covering comprises a layer of spherical particles which are multi-colored and may be translucent or opaque and are deposited onto the underlying layer using a vibrating pan or trough and are subsequently embedded by using a drum provided with a pressure belt (Column 5, lines 65 to Column 7, lines 60). The density of the particles is 0.55 to 0.65 pounds per square yard (***equivalent to 223 to 264 g/m²***) (Column 6, lines 45-50) and such a density provides a uniform, dense, unpatterned, textured inlaid appearance for the floor covering. Such floor coverings have excellent colorations (Column 3, lines

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5-30). Accordingly, it would have been obvious to one having ordinary skill in the art to provide the particles on the linoleum in an amount of 10 to 500 g/m² given that Lusi et al. specifically teach that such a density provides a uniform, dense, unpatterned, textured inlaid appearance for the floor covering. Furthermore, it would have been obvious to apply the particles to both sides of the linoleum sheet to provide coloration on both sides of the linoleum sheet.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bedford et al. (US 592,186) in view of Applicants own admission.

Bedford, as discussed above, does not state that the linoleum sheets are cut and arranged in a stack and rolled. However, the Applicants admit on page 2 that the process for producing marbled structures is known and comprises the steps of dividing the linoleum into pieces, arranged scale-like in the form of a multiplayer sheet stack wherein the sheet stack is fed into the nip of a calendar and rolled to the desired thickness. Accordingly, it would have been obvious to one having ordinary skill in the art to cut the linoleum sheets, arrange in a stack and roll using a calendar roller given that the Applicants admit that it is known to process linoleum sheets in such a way.

Response to Arguments

5. Applicant's arguments filed on November 25, 2002 (Paper No, 10) have been fully considered but they are not persuasive. Applicants traverse the rejection of claims 1, 3-6, 8-13, and 16-18 under 35 U.S.C. 102(b) as being anticipated by Bedford et al.

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(US 592,186), the rejection of claims 7 and 14 under 35 U.S.C. 103(a) as being unpatentable over Bedford et al. (US 592,186) in view of Lusi et al. (US 5,571,588) and the rejection of claim 2 under 35 U.S.C. 103(a) as being unpatentable over Bedford et al. (US 592,186) in view of Applicants own admission and submit that Bedford does not teach the claimed substantially **warp-free** pressing of the mixed particles into the rolled linoleum sheet and in fact teaches away from the claimed invention by using a metal roller to press the printed pattern or particles into the linoleum sheet. The Examiner disagrees with the Applicants interpretation. First, the Examiner would like to point out that the instant claims (and the description given in the Specification) are directed to a process for producing a patterned linoleum sheet using "substantially **warp-free** pressing" of the mixed mass particles into the rolled linoleum sheet. The term "warp" is defined as "turning or twisting out of shape" and hence the Examiner has interpreted the claims as reciting a process wherein the mixed particles are pressed into the linoleum sheet without turning or twisting the mixed mass particles out of shape. Second, the Examiner maintains that Bedford et al. teach a **warp-free** method of producing inlaid colored designs upon linoleum surfaces given that the coloring matter is deposited on the surface of the linoleum and pressure is applied using rollers to cause the coloring material to penetrate the linoleum such that the coloring material is not twisted out of shape. Hence, the above rejections are maintained.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (703)305-0594. The examiner can normally be reached on Mondays and Thursdays from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on (703)308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-5408 for regular communications and (703)305-3599 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-5665.



Sheeba Ahmed
January 27, 2003



Paul Thibodeau
Supervisory Patent Examiner
Technology Center 1700